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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Realization of the right to work

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

In the present report, prepared pursuant to Human Rights Council resolution 34/14, the United Nations High Commissioner for Human Rights examines the relationship between the realization of the right to work and the implementation of relevant targets of the Sustainable Development Goals. He notes that, to the extent that they are implemented consistently with international law, including human rights norms and standards, the Sustainable Development Goals and targets are a useful framework for supporting States in respecting, protecting and fulfilling the right to work.

Adopting a human rights-based approach to the implementation of the targets of the Sustainable Development Goals insofar as it relates to vulnerable and marginalized individuals, groups and populations is a fundamental element of contributing to the realization of the right to work. Consequently, how the right to work might be protected for a selection of these groups (who tend to be overrepresented in the unemployment and informal work statistics) as part of meeting these targets and fulfilling the commitments to leave no one behind and to reach the furthest behind first is also discussed.

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I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to its resolution 34/14, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare an analytical report on the relationship between the realization of the right to work and the implementation of relevant targets in the Sustainable Development Goals, in accordance with States' respective obligations under international human rights law. The Council specified that the report should indicate the major challenges and best practices in this regard, and be prepared in consultation with States, United Nations agencies, funds and programmes, particularly the International Labour Organization (ILO), and the treaty bodies, special procedures, civil society, national human rights institutions and other stakeholders.

2. Having invited input for the preparation of the from Member States, United Nations agencies and non-governmental organizations, OHCHR received a total of 27 contributions from Member States (Argentina, Australia, Bosnia and Herzegovina, the Dominican Republic, Estonia, Finland, Mauritius, Mexico, Morocco, Pakistan, Romania, Sri Lanka and Sweden), one United Nations agency (ILO), regional bodies (the Council of Europe and the European Union Agency for Fundamental Rights), civil society organizations (the Child Rights International Network, the European Youth Forum and ATD Fourth World) and national human rights institutions (the Danish Institute for Human Rights, the India National Human Rights Commission, the Netherlands Institute for Human Rights, the New Zealand Human Rights Commission, the People's Advocate Ombudsman of Moldova, the Office of the Human Rights Advocate of Nicaragua, the Ombudsmen of Latvia and the UK Equality and Human Rights Commission).

3. The present report provides an overview of the normative content of the right to work and the corresponding State obligations to ensure its full realization. It also reviews the Sustainable Development Goals framework as it pertains to the right to work, underscores the importance of paying attention to marginalized groups to ensure that no one is left behind, and highlights several challenges and best practices.

II. The right to work under international human rights law

4. The right to work is well established under international human rights law, and is recognized in, inter alia, the Universal Declaration of Human Rights (arts. 23 and 24), the International Covenant on Economic, Social and Cultural Rights (arts. 6, 7 and 8), the International Covenant on Civil and Political Rights (art.8 (3)(a)), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5(e)(i)), the Convention on the Elimination of All Forms of Discrimination against Women (art. 11(1)(a)), the Convention on the Rights of the Child (art. 32), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (arts. 11, 25, 26, 40, 52 and 54) and the Convention on the Rights of Persons with Disabilities (art. 27).

5. In its general comment No. 18 (2005), the Committee on Economic, Social and Cultural Rights described the right to work as both an individual and collective right. The individual dimension, referenced in article 6(1) of the International Covenant on Economic, Social and Cultural Rights, relates to "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts". Article 7 of the Covenant protects the right to just and favourable conditions of work, which is also an element of the individual aspect of the right to work. Just and favourable conditions of work include adequate and equal wages for work of equal value without discrimination, safe and healthy working conditions, equal opportunity for promotion, and rest, leisure and a reasonable limitation on working hours. The collective component of the right to work is detailed in article 8 of the Covenant, which stipulates the right to form and to join trade unions of one's choice. Article 8 also elucidates the rights of trade unions themselves to establish national

federations or confederations and to be able to function freely, "subject to no limitations other than those prescribed by law and which are necessary in a democratic society".

6. In addition to the freedom to choose or accept work as guaranteed in article 6 (1), article 6(2) of the Covenant describes several measures that States could take to ensure the fulfilment of the right to work, such as technical and vocational guidance and training programmes, and policies and techniques to achieve steady economic, social and cultural development and full and productive employment, under conditions safeguarding fundamental political and economic freedoms to the individual. The enumeration of these measures, which are essential elements of an enabling environment for the exercise of the right to work, is not exhaustive.[1]

7. As understood in article 6 of the Covenant, work must be decent work, respecting the fundamental rights of the person (such as the physical and mental integrity of the worker) as well as the rights of workers in relation to remuneration and occupational safety. Decent work provides an income that allows workers to support themselves and their families in accordance with the provisions of article 7.[2] The normative content of the right to work has the following additional elements:[3]

(a) Availability, which requires States to have specialized services to assist and support individuals in identifying and securing available employment;

(b) Accessibility, to ensure that the labour market is open to everyone without discrimination;

(c) Acceptability and quality, which cover the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.

8. Core obligations in relation to the right to work include ensuring the right of access to employment, particularly for disadvantaged and marginalized individuals and groups, and avoiding measures that result in discrimination against and unequal treatment of them or in weakening protection mechanisms available to them. States are furthermore required to adopt and implement a national employment strategy and plan of action to address the concerns of the entire workforce based on a transparent and participatory process in which employers and workers organizations participate.[4]

9. As with all the rights protected under the International Covenant on Economic, Social and Cultural Rights, States should ensure the progressive realization of the right to work by taking measures aimed at achieving full employment.[5] Similarly, States have a duty to respect, protect and fulfil the right to work. Respect requires refraining from direct or indirect interference with the enjoyment of the right, protection calls for measures to prevent third-party interference, while fulfilment includes the obligations to provide, facilitate and promote the right to work. Legislative, administrative, budgetary, judicial and other measures to ensure its full realization are implicit in these obligations.[6]

III. The 2030 Agenda for Sustainable Development and the right to work

10. The 2030 Agenda for Sustainable Development, in a significant departure from the Millennium Development Goals that preceded it, is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law, and is

[1] See general comment No. 18 (2005) of the Committee on Economic, Social and Cultural Rights on the right to work, paras. 2 and 6.

[2] Ibid., para. 7. See also general comment No. 23 (2016) of the Committee on the right to just and favourable conditions of work, para. 18.

[3] General comment No. 18 (2005) of the Committee on Economic, Social and Cultural Rights on the right to work, para. 12.

[4] Ibid., para. 32.

[5] Ibid., para. 19.

[6] Ibid., para. 22.

grounded in the Universal Declaration of Human Rights and international human rights treaties, among other instruments.[7] The Sustainable Development Goals seek to realize the rights of all; States have committed, in the 2030 Agenda, to leaving no one behind and to reaching the furthest behind first.[8] As previously noted by OHCHR in its position paper "Transforming Our World: Human Rights in the 2030 Agenda for Sustainable Development", the Sustainable Development Goals offer a new, more balanced paradigm for more sustainable and equitable development in that, while the Millennium Development Goals addressed only a narrow set of economic and social issues, the Sustainable Development Goals include 17 goals and 169 targets covering a wide range of issues that effectively mirror the human rights framework. Moreover, the targets of the Goals reflect the content of corresponding human rights standards, even though they are not framed explicitly in the language of human rights. The 2030 Agenda and the political commitments contained in it therefore complement the human rights framework by affirming many existing norms and setting out a road map to achieve them.

11. With regard to work, States pledged in the 2030 Agenda to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work and to work to build dynamic, sustainable, innovative and people-centred economies, promoting youth employment and women's economic empowerment, in particular decent work for all. These pledges are complemented by a commitment to adopt policies that increase productive capacities, productivity and productive employment. Sustainable Development Goal 8, on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, is the most comprehensive goal applicable to the right to work, in particular the targets 8.3, 8.5, 8.6, 8.8, 8.9 and 8.b.

12. A number of other Sustainable Development Goals and targets are of broader relevance to the right to work. The realization of this right has a clear and direct impact on the achievement of Goal 1 (on ending poverty in all its forms everywhere) and Goal 2 (on ending hunger, achieve food security and improved nutrition and promoting sustainable agriculture). With regard to health, target 3.4 aims at reducing premature mortality from non-communicable diseases through prevention and treatment and the promotion of mental health and well-being, while target 3.9 aims at reducing the number of deaths and illnesses from hazardous chemicals. Such objectives are directly linked to the duty of States to ensure safe and healthy working conditions. With regard to education and its role in promoting the realization of the right to work by building a skilled workforce, targets 4.3 and 4.4 are pertinent, as they aim, respectively, to ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education and to increase the number of youth and adults who have relevant skills for employment, decent jobs and entrepreneurship. In the light of the gender disparities that persist in labour force participation and employment (see A/HRC/34/29, para. 15), the achievement of Goal 5 (on achieving gender equality and empower all women and girls), particularly targets 5.4, 5.5 and 5.a, would do much to foster the realization of the right to work, as would Goal 10 (on reducing inequality within and among countries) with its targets addressing laws, policies and practices, social, economic and political inclusion, equality of opportunity, and the reduction of inequalities of outcome, as enshrined in targets 10.2, 10.3 and 10.4.

13. In considering the relationship between the realization of the right to work and the implementation of relevant targets of the Sustainable Development Goals, it is important to recognize that, to the extent that they are implemented consistently with international law, including human rights norms and standards,[9] the Goals and targets are a useful framework for supporting States in respecting, protecting and fulfilling the right to work. Certain targets provide for many elements of an enabling environment for the realization of the right to work: article 6(2) of the International Covenant on Economic, Social and Cultural Rights provides for, in addition to technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full

[7] General Assembly resolution 70/1, para. 10.

[8] Ibid., para. 4.

[9] See General Assembly resolution 70/1, para. 18.

and productive employment, under conditions safeguarding the fundamental political and economic freedoms of the individual. Part of creating an enabling environment involves legislative, policy and other measures to give effect to the duty to respect, protect and fulfil the right to work.[10] In this respect, targets 8.3 (on development-oriented policies), 8.8 (i.e protection of labour rights and the promotion of safe and secure working environments for all workers), 8.9 (developing and implementing policies to promote sustainable tourism that creates jobs and promotes local culture and products) and 8.b (global strategy for youth employment and implementation of the ILO Global Jobs Pact) are especially relevant.

14. Some of the normative content of the right to work is reflected in the targets, as are several State obligations. Under the International Covenant on Economic, Social and Cultural Rights, the overarching obligation is for States to ensure the progressive realization of the right to work.[11] This is echoed in target 8.5, while the targets relating to the protection of labour rights and the promotion of occupational health and safety also align with the normative content of the right to work.

15. Non-discrimination, equality and inclusion are an integral part of several goals and targets: the objectives of achieving equality overall and gender equality specifically underpin Goals 5 and 10, respectively. Target 8.5 (on full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value) requires the elimination of discrimination in remuneration and access to employment. Several dimensions of inclusion, particularly economic, social and political inclusion, equality and non-discrimination are features of a number of targets, including targets 10.2, 10.3 and 10.4.

16. The Sustainable Development Goals and, necessarily, their targets are universal and interlinked with a view to supporting a coordinated, comprehensive approach. In the 2030 Agenda, the General Assembly clearly noted that the interlinkages and integrated nature of the Goals were of crucial importance in ensuring that the purpose of the new Agenda was realized. This reflects the interdependence and indivisibility of the human rights on which the 2030 Agenda is based.

17. In this context, interesting examples can be considered. Since 2005, in India, the Mahatma Gandhi National Rural Employment Guarantee Act has provided a minimum of 100 days of guaranteed wage employment in any financial year to every rural household whose adult members volunteer to do unskilled manual work. Through this process, the Act address the linkage between the right to work, the right to food and the right to life enshrined in the Constitution of India.

IV. Leaving no one behind

18. Adopting a human rights-based approach to the implementation of the targets of the Sustainable Development Goals insofar as this relates to vulnerable and marginalized individuals, groups and populations is a fundamental element of contributing to the realization of the right to work.

A. Women

19. According to ILO, the significant progress in women's educational achievements has not yielded a corresponding improvement in their position at work, and women continue to experience greater challenges in gaining access to work than men; specifically, "barriers to participation, persistent occupational and sectoral segregation and a disproportionate share of unpaid household and care work prevent them from enjoying equal access to opportunities".[12] Moreover, access to employment has not necessarily meant access to decent work, and women remain at greater risk of unemployment.[13] The gendered nature of the global workforce has meant that women are concentrated and overrepresented

[10] See Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, paras. 24-28.

[11] Ibid., para. 19.

[12] ILO, *Women at Work: Trends 2016*, Geneva, 2016, p. 5.

[13] Ibid., p. 12.

in lower paying occupations and positions (such as domestic work), in non-standard employment and in the informal sector, where social protection tends to be limited or non-existent (see A/HRC/34/29).

20. With regard to working conditions, the global gender pay gap is estimated to be around 23 per cent, with women earning, on average, 77 per cent of men's wages.[14] ILO notes in this regard that the lack of data disaggregated by sex inhibits an accurate assessment of this disparity.[15] Working mothers also experience a "wage penalty", earning less than women without dependent children, while working fathers tend to earn a "fatherhood bonus", becoming higher earners when they have children. This premium on fatherhood may even be exceptionally high for men, depending on their education level, ethnicity, heterosexual marital status and professional or managerial status.[16] In a recent report, the United Nations High Commissioner for Human Rights noted the vulnerability of women working in manufacturing and other sectors in export-processing zones to violations of their labour rights, observing that, often, in order to attract investors, States adopt specific regimes for export-processing zones whereby labour law does not apply, either partially or fully, and that reports of low wages, long working hours, unpaid overtime, sexual harassment and other forms of violence in export-processing zones are rife (A/HRC/34/29, para. 49).

21. A human rights-based approach to addressing gaps in the realization of women's right to work entails, among other steps, the establishment of a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment for women by ensuring equal pay for work of equal value.[17] It also includes the review of law and policy frameworks and labour practices to ensure the adoption of measures necessary to align them with human rights norms and standards pertaining to the right to the right to work in this area. Furthermore, as the Committee on Economic, Social and Cultural Rights noted in its general comment No. 18 (2005), States should take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection. The key objectives of these measures should be the elimination of structural, social and other barriers to women's access to decent work and retention of employment, and just and favourable working conditions.

B. Persons with disabilities

22. There are approximately 470 million persons with disabilities of working age around the world. Many find it hard to gain access to decent work, and are often forced to seek employment in the informal sector. As well as experiencing discrimination and marginalization in employment, they also have limited enjoyment of other rights essential for the realization of the right to work, such as the rights to education, legal capacity and access to information. An estimated 82 per cent of persons with disabilities in developing countries live below the poverty line, and are among the most vulnerable and marginalized.[18] There is, therefore, a strong link between disability and poverty.

23. Persons with disabilities face barriers of access that include the denial of reasonable accommodation, meaning an adjustment or modification required in the work environment or application process to enable a person with a disability to enjoy equal employment opportunities. This is a key part of States' obligations to ensure non-discrimination and equality, and that no one is left behind. Access to decent work is also impeded by

[14] Ibid., p. xvi.

[15] ILO, *Fundamental principles and rights at work: From challenges to opportunities*, Geneva, 2017, para. 65.

[16] ILO, *Women at Work* (see footnote 12), p. 58.

[17] Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 13. See also CEDAW/C/THA/CO/6-7, para. 37 (c).

[18] ILO, *The right to decent work of persons with disabilities*, Geneva, 2007.

widespread perceptions that persons with disabilities are unable to work or are eligible only for specific jobs, or for work in segregated environments.[19]

24. Many persons with disabilities consequently rely on disability benefits (where they are offered). Many States have, however, gradually reduced social protection programmes, including those targeting persons with disabilities, through austerity measures, and are continuing to do so. Social support and assistance have been reduced, and eligibility criteria for social assistance have been tightened, while conditionalities have been increased and more severe sanctions for non-compliance introduced (CRPD/C/GBR/CO/1, para. 58). Measures of this type have significantly increased the risk of further marginalization of and poverty among persons with disabilities, and could drive some into hazardous and exploitative work.

25. The implementation of Sustainable Development Goal 8 and other relevant goals and targets must be informed by the human rights framework, including the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights. The respective treaty-monitoring bodies provide guidance on what the right to work and just and favourable conditions of work for persons with disabilities entail. According to key guidance in this area, workers with disabilities should not be segregated in sheltered workshops, should benefit from an accessible work environment and should not be denied reasonable accommodation, such as workplace adjustments or flexible working arrangements. States should also take steps to ensure that workers with disabilities enjoy equal remuneration for work of equal value and to eliminate wage discrimination due to a perceived reduced capacity for work.[20]

C. Migrants in an irregular situation

26. Although reliable data are not readily available, estimates indicate that around 10 to 15 per cent of all international migrants, or 30 million people, are in an irregular situation. Irregular migrants are often vulnerable for a number of reasons, many of which are related to their irregular situation. They are frequently not permitted to work, although, in practice, many do work irregularly and mostly in the informal sector. Irregular migrants are also at high risk of exploitation, particularly given tha, the sectors in which many work are often unprotected and unregulated, such as the construction, agriculture, food processing and fisheries industries. Their conditions of work are frequently harsh and inhumane, with little provision for occupational health and safety, while many experience abuse, including physical abuse and sexual and gender-based violence.[21]

27. As well as typically earning lower wages compared to nationals and other migrants in similar occupations, legal requirements may limit the ability of migrants in an irregular situation to seek alternative employment, and may actively tie them to a particular employer, which violates the right to freely choose or accept employment. These challenges may be compounded when such migrant workers feel unable to assert their rights and seek the protections available to other workers out of fear of detection and possible consequences.[22]

28. The implementation of the Goals and targets of the 2030 Agenda for Sustainable Development relating to the protection of labour rights should involve, in accordance with human rights norms and standards, the adoption of legal and practical measures to prevent discrimination against irregular migrants, the removal of laws and rules that make access to basic services conditional on the production of documents that irregular migrants cannot obtain, and ensuring that irregular migrants have full, non-discriminatory access to appropriate administrative and judicial remedies. It should also entail the development of

[19] Netherlands Human Rights Institute, Annual status report 2016, "Poverty, social exclusion and human rights".

[20] See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016) on the right to just and favourable conditions of work (E/C.12/GC/23), para. 47 (c).

[21] OHCHR, *Behind closed doors: Protecting and promoting the human rights of migrant domestic workers in an irregular situation* (New York and Geneva, 2015), p. 3.

[22] Ibid.

specific national strategies or plans of action to realize the rights to health, housing, education, social security and decent work of all migrants, ensuring that they pay due attention to the situation of irregular migrants.[23]

29. One positive example of awareness-raising made by the European Union Agency for Fundamental Rights is the Task Force on Combating Human Trafficking, established by the Government of Austria, which provides migrant domestic workers with information about their rights in their first language when applying for a visa.

D. Youth

30. Access to decent work for young people is a global problem. Seventy three million young people worldwide are seeking employment; in Europe, the unemployment rate for those under 25 is 2.6 times higher than for the rest of the population.[24] According to the European Youth Forum, young people often lack the experience they need to be competitive in the global labour market and in Europe, and few employers are willing to engage and invest in young and inexperienced workers. To gain the necessary experience, many have to accept unpaid internships, which excludes the most marginalized who cannot afford to work for free. In this regard, the European Youth Forum has called upon States to regulate internships and to ban unpaid ones to ensure fair access for all young people, regardless of their socioeconomic background. Moreover, cuts to education, especially to support services, made by many States in response to the financial crisis that broke out in 2008, are said to have further reduced access to quality education for many disadvantaged children, and considerably limited their access to decent work.[25]

31. Some States have lowered labour standards and social protection for private actors employing young people. The European Committee on Social Rights has criticized States for proposing special apprenticeship contracts that have in effect create a distinct category of workers excluded from the general range of protection offered by the social security system.[26] Some States have set the minimum wage for young people substantially lower than that of the general population,[27] despite indications that, in many States, the legal minimum wage is insufficient to secure an adequate standard of living.[28] Some States have also restricted the social security benefits that young people may receive.[29]

32. Key measures that should be taken in this context include national policies relating to adequate education and vocational training with a view to promoting access to employment opportunities, particularly for young women.[30] As pointed out by the Committee on Economic, Social and Cultural Rights, all workers should be protected against age discrimination, and young workers should not suffer wage discrimination by, for example, being forced to accept low wages that do not reflect their skills. The Committee also emphasized that the excessive use of unpaid internships and training programmes, as well as of short-term and fixed-term contracts that negatively affect job security, career prospects and social security benefits, is not in line with the right to just and favourable conditions of work.[31]

33. Given the multifaceted aspects of employment, in Finland, the Ministry of Economic Affairs and Employment and other ministries are developing, under the Youth Guarantee scheme, "one-stop-shop" service points, the aim of which is to bring together service providers and to increase cooperation between administrative bodies.

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[23] Ibid., p. 135.

[24] Council of Europe, "Youth human rights at risk during the crisis", 3 June 2014.

[25] European Youth Forum, *Excluding Youth: A Threat to Our Future*, 2016.

[26] Council of Europe, "Youth human rights at risk" (see footnote 24).

[27] Ibid.

[28] Youth Employment UK, "Living a wage, and young people", 2016.

[29] Joseph Rowntree Foundation "Young People and Social Security: An International Review (York, October 2015).

[30] Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 14.

[31] Committee on Economic, Social and Cultural Rights general comment No. 23 (2016) on the right to just and favourable conditions of work, para. 47 (b).

E. Older persons

34. The number of persons aged 60 and over is rising at an unprecedented rate, and is expected to increase from the estimated number of 962 million for 2017 to 1.4 billion by 2030.[32] By 2050, all regions of the world (except Africa) will have nearly a quarter or more of their populations at ages 60 and above.[33]

35. Older persons face numerous challenges in their access to the right to decent work, such as age-based discrimination in both the job market and at work. Older people may face prejudice when applying for jobs, seeking promotions or undertaking training, or may be subject to harassment in the workplace. One common complaint made to national human rights institutions by ageing and older persons was that of having been refused employment, interviews or other opportunities to find work because of their age.[34]

36. Most older women are excluded from formal social security and health insurance schemes, as they are linked to paid, formal-sector employment. In developing countries, the great majority of women work all their lives in the informal sector or doing unpaid activities. In developed countries, older women are more likely than men to be poor. On average, in European Union countries, older women have a poverty risk rate of about 22 per cent, compared to a rate of 16 per cent for older men. They are less likely to receive a large contributory pension since they are more likely to have stopped working at some point over their lifetime to take on the responsibilities of child rearing, and are also more likely to have received lesser wages for their work than men.

37. The protection of the right of older persons to work hinges to a great extent on measures to address discrimination in access to work and in the workplace. The measures should be coupled with interventions to address gender discrimination, and other forms of discrimination that have an impact on access to employment and the enjoyment of the right to just and favourable working conditions. States should give due consideration to establishing non-contributory pensions as a means of ensuring the right to social security for older women and compensating them for their years of unpaid or inadequately paid work. In order to ensure equal access by older women to a social pension, however, special measures should be taken to overcome possible barriers caused by structural discrimination, such as lack of access to adequate documentation and identification, difficulties approaching administrations, or lack of gender-sensitive social services (A/HRC/33/44, paras. 51-57).[35]

38. According to information received from the European Union Agency for Fundamental Rights, some States (such as Denmark) have abolished the upper age limits for employment, thereby allowing those who were above the limit beforehand to continue to work or to seek employment. Furthermore, dismissal or the withholding a job offer on the basis of a person's age would constitute age discrimination. Several European States have also made financial incentives available to employers for hiring older workers.

V. Issues relevant to the implementation of the right to work and the Sustainable Development Goals

A. Adequate and accessible social security

39. The right to decent work includes adequate and accessible social protection. This is also included in Sustainable Development Goal 1 (on ending poverty in all its forms everywhere), which includes target 1.3 that requires States to implement nationally appropriate social protection systems and measures for all, including floors. Under article 9

[32] Department of Economic and Social Affairs, World Population Prospects: 2017 Update.

[33] Ibid.

[34] Ibid.

[35] See also Committee on Economic, Social and Cultural Rights general comment No. 19 (2007) on the right to social security (art. 9), para. 32.

of the International Covenant on Economic, Cultural and Social Rights. States are required to ensure the right to social security, which includes both social insurance and assistance.[36]

40. The politically determined trend currently witnessed in many States to reduce the role of the State, including in response to the recent debt crisis, however, has led to a reduction in social security, particularly assistance. States have both reduced the amount received by recipients and/or reduced coverage by making eligibility rules tighter (see A/HRC/17/34 and E/2013/82). Measures taken have also increased sanctions for non-compliance with specific conditions. In addition, politicians and the media increasingly stigmatize those on benefits, thereby discouraging many from claiming their entitlements.[37]

41. In its general comment No. 19 (2007), the Committee on Economic, Social and Cultural Rights stated that Governments should ensure that social security is financially accessible, namely, affordable. This includes social insurance. However, low and irregular wages, exacerbated by the "flexibilization" of labour markets worldwide, make it difficult for many to contribute to social insurance schemes.[38] Women are particularly disadvantaged by interrupted work histories due to traditionally assigned caregiver roles.[39]

42. States should also ensure accessible and adequate social protection in accordance with human rights law and the ILO Recommendation No. 202 concerning National Floors of Social Protection. Inadequate and/or inaccessible social protection systems, including those that can stigmatize recipients can "entrench socio-economic inequalities".[40] States should thus continually assess the goods and services people need to able to move out of poverty, and to monitor them accordingly.

B. Informal economy

43. Target 8.3 of the Sustainable Development Goals calls upon States to support decent job creation. The informal economy, which is generally neither taxed nor monitored by any form of government, however, is growing. Workers in the informal economy are typically excluded from various legal protections. They often earn lower average wages, and are rarely provided with social security coverage or any other form of social protection by their employers or the Government, such as health care, pensions, education, skill development, training or child care. They may also be outside the reach of health and safety standards, and their work place may be unsafe, hazardous or unhealthy.

44. Labour market discrimination in the formal job market often forces certain groups, such as indigenous peoples, persons with disabilities, women, and particular ethnic groups, into working in the informal economy. Given the lack of protection in the informal economy and low wages, this often entrenches their poverty and marginalization even further, and makes them more likely to be left behind.

45. The informal sector could expand further owing to future employment developments, such as non-standard forms of employment facilitated by increases in digital technology, or a drop in the availability of more traditional jobs, especially for the low-skilled. While the rise in non-standard forms of employment can be seen as an opportunity, unless properly regulated, it may jeopardize the 2030 Agenda for decent work.[41]

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[36] Ibid.

[37] Frances Ryan, "On Benefits and Proud: The show where 'deserving taxpayers' stalk 'proud benefit claimants'", *NewStatesman*, 15 October 2013.

[38] Sandra Fredman, "Engendering socio-economic rights", *South African Journal of Human Rights*, vol. 25, part 3 (2009), p. 412.

[39] See ILO, "Gender equality at the heart of decent work", International Labour Conference, 98th session, 2009.

[40] Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press, 2008), pp. 226 and 232.

[41] ILO, *Non-standard employment around the world: understanding challenges, shaping prospects*, Geneva, 2016.

C. Precarious contracts

46. Target 8.8 of the Sustainable Development Goals urges States to protect labour rights. Efforts in many countries to dismantle or limit regulation aimed at protection workers right have, however, resulted in reduced protection of workers, increasing the number of insecure or precarious contracts. Such a deregulation has also been pushed by international financial institutions, which have also promoted precarious contracts and facilitated dismissals as part of austerity-related law reforms.[42]

47. According to trade unions, deregulation has resulted in contracts where employers are not required to provide any minimum working hours, while employees must be available for work as and when required. Such contracts are used by employers to avoid recruitment and agency costs, and are associated with low pay, income insecurity and insufficient working hours, despite the obligation of employees to be continuously available for work. Deregulation can limit other work possibilities, and the ability to earn enough to cover the costs of living.[43] Other casual contracts might provide for minimal hours but may be subject to last-minute changes and reductions. Such insecure contracts are likely to increase in the future with the rise of the "gig economy".[44]

48. The above-mentioned types of contracts are said to place workers at a higher risk of poverty.[45] Given "the market power of employers over employees [,]employers are able to glean all the flexible benefits associated with zero-hours contracts; whilst all the financial and security risks are transferred to the workers."[46] They therefore undermine the realization of the Sustainable Development Goals and violate the right to decent work, as contained in the International Covenant on Economic, Social and Cultural Rights.[47] This has also led to calls for a different assessment of the implications of the indicators under Goal 8: "High levels of underemployment and precarious work mean that the standard unemployment rate is inadequate as a sole measure of the condition of the labour market."[48]

49. The establishment of ombudspersons can be helpful for the resolution of work-related grievances, including on salaries and benefits. In Australia, the Fair Work Ombudsman helps employers and employees to resolve workplace issues, and provides clear information on their rights and obligations. The Ombudsman of the Republic of Latvia has been constantly involved in the protection of the interests of persons at risk of poverty, including the "working poor" and those suffering from insufficient minimum wages and unfair remuneration.

D. Occupational health and safety

50. Target 8.8 of the Sustainable Development Goals also calls upon States to promote safe and secure working environments. Despite this, continuing deregulation has led many Governments to remove "red tape" around health and safety regulations that are often perceived as unfairly hindering business and restricting economic growth. In reality, the economic burden of poor occupational safety and health practices is estimated at 4 per cent

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[42] Stefano Sacchi, "Conditionality by other means: EU involvement in Italy's structural reforms in the sovereign debt crisis", *Comparative European Politics*, vol. 13, No. 1 (2015), pp. 82-83 and 89. See also A/HRC/34/57.

[43] Trades Union Congress, Ending the abuse of zero-hours contracts – TUC response to BIS consultation, Equality and Employment Rights Department, London, March 2014.

[44] Forms of work in the "gig economy" include "crowdwork" and "work-on-demand via apps", under which the demand and supply of working activities is matched online or via mobile apps. See Valerio De Stefano, "The rise of the 'just-in-time workforce': on-demand work, crowdwork and labour protection in the 'gig-economy'", ILO, Conditions of Work and Employment Series No. 71, 2016.

[45] Netherlands Human Rights Institute, Annual status report 2016: "Poverty, social exclusion and human rights".

[46] Trades Union Congress, Ending the abuse of zero-hours contracts (see footnote 43).

[47] See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016) on the right to just and favourable conditions of work (art. 7).

[48] Kristy Jones, *Tough Jobs: The Rise of an Australian Working Underclass*, Construction, Forestry, Mining and Energy Union, September 2016.

of global gross domestic product each year.[49] Unhealthy and/or hazardous working conditions significantly undermine people's ability to work and to provide for themselves and their families.

51. In addition to ensuring adequate regulation, States should also guarantee appropriate inspection and monitoring systems. Article 9 of the ILO Occupational Safety and Health Convention, 1981 (No. 155) specifies that "the enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection" and "the enforcement system shall provide for adequate penalties for violations of the laws and regulations." Such systems should be adequately combined with prevention policies aimed at helping employers and workers to avoid or eliminate the risk of occupational accidents and diseases. There are also many other ILO conventions governing labour inspections, such as the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

52. While target 8.8 calls upon States to protect labour rights, it only urges States to "promote safe and secure working environments for all workers". This falls short of human rights standards and the numerous ILO conventions and recommendations specifically dealing with occupational safety and health.

F. Trade unions

53. While the Sustainable Development Goals, and in particular target 8.8, acknowledge the importance of protecting labour rights, there is no mention of the role of trade unions. Moreover, many States, often strongly encouraged by international financial institutions, have implemented austerity-related labour measures aimed at weakening trade unions, targeting collective bargaining systems by, inter alia, limiting extension agreements between different sectors (see A/HRC/34/57). They have undermined collective labour rights, including the right to form and join trade unions (A/HRC/34/57, para. 29). In some cases, Governments have imposed stricter regulation of the content of collective agreements, procedures for bargaining, and regulation of trade unions.[50] Multilateral financial institutions have also conditioned loans on recipient States, thereby weakening labour protections, denying workers a voice in the process and moving employment towards informality (A/71/385, para. 85).

54. Trade union protection is a key factor in ensuring access to decent work and equality. Unions can assist women workers, especially household, domestic or migrant workers, in claiming their labour rights by providing access to online information, and offer opportunities to organize online to improve laws, wages and working conditions and report abuses.[51] There is an historic link between strong trade unionism and more equal societies.[52]

55. Trade unions have also adapted to the changing nature of employment and helped to address issues relating to self-employed workers. With the emergence of new forms of work, it is important to have a democratic process of dialogue between workers and employers to mediate control of the gains of production.[53]

56. To achieve the Sustainable Development Goals and ensure that no one is left behind, States must guarantee conditions necessary for workers to join and form trade unions. It is essential that trade unions be able to operate freely. Building a future economy where the benefits of work and profit are shared requires legal reform in support of effective trade unions.[54]

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[49] ILO, Occupational Safety and Health, available at www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_OSH_EN/lang--en/index.htm.

[50] Jones, *Tough Jobs* (see footnote 48).

[51] United Nations Non-Governmental Liaison Service, Recommendations on Women's Human Rights and Gender Equality, Policy Brief #7.

[52] Lydia Hayes and Tonia Novitz, *Trade Unions and Economic Inequality*, Institute of Employment Rights, 2014. See also A/HRC/34/57, para. 11.

[53] See ILO, *The Future of Work We Want: A global dialogue*, Geneva, 2017.

[54] Hayes and Novitz, *Trade Unions and Economic Inequality* (see footnote 52).

VI. Participation and accountability

57. The 2030 Agenda for Sustainable Development is an agenda "of the people, by the people and for the people", in which States committed to instituting a revitalized Global Partnership for Sustainable Development, based on a spirit of strengthened global solidarity, focused in particular on the needs of the poorest and most vulnerable and with the participation of all countries, all stakeholders and all people.[55] This pledge evokes a fundamental human rights norm, that of participation, which recognizes that stakeholders have a right to participate meaningfully in the development, implementation and monitoring of policies that affect them.[56]

58. The principle of participation has a distinct application for the collective dimension of the right to work, particularly the right to form and join trade unions. As noted by ILO, the right to organize and bargain collectively provides an essential foundation for social dialogue, effective labour market governance and the realization of decent work.[57] Social dialogue includes all types of negotiation, consultation or exchange of information between or among representatives of Governments, employers and workers on issues of common interest relating to economic and social policy.[58] It should ensure the inclusion of representatives of groups that are underrepresented in formal work, such as women, migrants, children and persons with disabilities, and a number of prerequisites need to be fulfilled in order to support robust social dialogue mechanisms and processes. These include strong, independent representative workers' and employers' organizations with the necessary technical capacity and access to relevant information, respect for the fundamental rights of freedom of association and collective bargaining, political will and commitment to engage in good faith in social dialogue on the part of all parties, and appropriate institutional support.[59] Crucially, through social dialogue and collective bargaining, workers and their organizations improve their working conditions and wages and, in many instances, have successfully expanded the scope of collective bargaining to include questions of workers protection, such as safety and health at the workplace and social security schemes, workers' education and training, and even the participation of workers in the management of enterprises.[60]

59. Social dialogue also allows for accountability and may be an important means for holding States accountable for delivering on their obligations with regard to the right to work. In the specific context of the Sustainable Development Goals, OHCHR has urged States to establish a participatory national follow-up and progress review process, which should be based on the relationship between Governments and the people. The country-led component for accountability should be built on existing national and local mechanisms and processes, with broad, multi-stakeholder participation, and should establish benchmarks, review the national policy framework, chart progress, analyse lessons learned, consider solutions and ensure that policies and programmes are on the right track for meeting the Goals and targets of the 2030 Agenda. Finally, national reviews of progress in the implementation of the Goals should also integrate reports and recommendations of existing human rights review processes, as well as information from existing national mechanisms for oversight and review on matters relating to the Goals, including the parliament or other legitimate decision-making body, local government authorities and national human rights institutions.[61]

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[55] General Assembly resolution 70/1, para. 52.

[56] Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 42.

[57] ILO, *Fundamental principles and rights at work: From challenges to opportunities*, Geneva, 2017, para. 12.

[58] See ILO, *Social dialogue: Finding a common voice*, Geneva (undated).

[59] Ibid.

[60] Ibid.

[61] OHCHR, Integrating Human Rights into the Post-2015 Development Agenda, Follow-up and Review: Ensuring Accountability for the SDGs, available from www.ohchr.org/Documents/Issues/MDGs/Post2015/AccountabilityAndThePost2015Aagenda.pdf.

60. National human rights institutions can play an important role in monitoring the right to work. In the United Kingdom of Great Britain and Northern Ireland, the Equality and Human Rights Commission is an independent and non-departmental public body that has the power to intervene in court proceedings in human rights and equality cases. The Commission has moreover developed a measurement framework covering six domains, including work. Indicators include earnings, occupational segregation and levels of employment, which overlap with, and help to reinforce, the aims of Sustainable Development Goals 5 (target 5) and 8 (target 5).[62]

VII. Conclusions

61. **The 2030 Agenda for Sustainable Development is closely aligned with human rights norms and standards; implementing the Goals and targets applicable to work in accordance with a human rights-based approach will therefore make a significant contribution to the realization of the right to work. In developing and implementing policies designed to give effect to the Sustainable Development Goals, States should respect, protect and fulfil the rights of marginalized and vulnerable individuals, groups and populations as a priority, ensuring that no one is left behind and that the furthest behind are reached first. Empowering the vulnerable, as called for in the Agenda, requires operationalizing the human rights principles of accountability and participation in all institutions, processes and mechanisms charged with following up on the work-related Goals and targets. It is only by mobilizing the political will to advance these commitments, rooted as they are in human rights, that the people-centred 2030 Agenda will come into its own.**

[62] See www.equalityhumanrights.com/en/britain-fairer.